Rule 103. Rulings on Evidence.

(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

(1) if the ruling admits evidence, a party, on the record:

(A) timely objects or moves to strike; and

(B) states the specific ground, unless it was apparent from the context; or

(2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) Not Needing to Renew an Objection or Offer of Proof. Once the court rules definitively on the record—either before or at trial—a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) Court's Statement About the Ruling; Directing an Offer of Proof. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.

(d) Preventing the Jury from Hearing Inadmissible Evidence. To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

(e) Taking Notice of Fundamental Error. A court may take notice of an error affecting a fundamental right, even if the claim of error was not properly preserved.

Comment to 2012 Amendment

Subsection (b) has been added to conform to Federal Rule of Evidence 103(b).

Additionally, the language of Rule 103 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

The substance of subsection (e) (formerly subsection (d)), which refers to "fundamental error," has not been changed to conform to the federal rule, which refers to "plain error," because Arizona and federal courts have long used different terminology in this regard.

Cases

Paragraph (a) — Effect of erroneous ruling.

103.a.010 If a party is entitled to object to certain evidence during trial, the trial court has discretion to consider the objection by means of a motion in limine made before or during trial, even though the party makes this motion less than 20 days before the trial begins.

State v. West, 176 Ariz. 432, 442, 862 P.2d 192, 202 (1993) (because state could have objected during trial to evidence of victim's suicidal tendencies, trial court had discretion to consider evidentiary question by means of motion in limine, even though state made motion less than 20 days prior to trial).

* *State v. Alvarez,* 228 Ariz. 579, 269 P.3d 1203, ¶ 11 (Ct. App. 2012) (during opening statement, defendant's attorney discussed possible third-party culpability and state objected; after opening statements, state again objected, and trial court precluded that evidence; because state could

have objected to admission of evidence of third-party culpability during trial, state was not required to filed written objection 20 days prior to trial, and trial court did not abuse discretion in considering state's objection made after trial had started).

Brown v. U.S.F. & G., 194 Ariz. 85, 977 P.2d 807, ¶¶ 9–11 (Ct. App. 1998) (plaintiff did not file motion in limine by cut-off date imposed by trial court, and instead filed motion asking trial court to reconsider cut-off date and rule on plaintiff's motion to preclude polygraph evidence; trial court denied motion to reconsider cut-off date; at trial, plaintiff made tactical decision to admit polygraph evidence first; on appeal, plaintiff contended trial court erred in admitting polygraph evidence; court held that, because trial court had not ruled on merits of polygraph evidence before trial, plaintiff could have objected at trial if defendant sought to admit that evidence, and because plaintiff did not object, plaintiff could not raise issue on appeal).

State v. Zimmerman, 166 Ariz. 325, 328, 802 P.2d 1024, 1027 (Ct. App. 1990) (because state could have objected to admission of expert testimony during trial itself, trial court did not abuse its discretion in resolving that issue prior to start of trial, even though state filed its motion to preclude admission of evidence less than 20 days prior to trial).

State v. Vincent, 147 Ariz. 6, 8–10, 708 P.2d 97, 99–101 (Ct. App. 1985) (trial court did not abuse discretion in considering motion to dismiss filed after original 20-day deadline had past, but did abuse discretion in granting motion to dismiss).

103.a.020 To preserve for appeal the question of admission of evidence, a party must make a specific and timely objection; if the party **fails to object**, the party will have waived the issue on appeal.

State v. Cruz, 218 Ariz. 149, 181 P.3d 196, ¶¶ 104–105 (2008) (state called witness who was visibly intoxicated; defendant initially objected but then withdrew his objection; court stated that objection that is withdrawn is waived).

State v. Ellison, 213 Ariz. 116, 140 P.3d 899, ¶¶ 57–58 (2006) (when detective testified about looking to find "the gun that was described [to police] [by codefendant]" defendant's attorney chose not to object immediately to avoid emphasizing statement to jurors; defendant's attorney later suggested that trial court strike statement; trial court suggested instruction could prevent any improper inferences by jurors; parties agreed statement would not be struck to avoid drawing attention to it, and defendant's attorney did not request any limiting instruction; defendant claimed on appeal that trial court erred in not sua sponte ordering mistrial or giving limiting instruction; court noted that, except for fundamental error, party generally waives objection by either not asking that testimony be struck with limiting instruction, or requesting mistrial; court found any error was not fundamental).

State v. Huerstel, 206 Ariz. 93, 75 P.3d 698, ¶¶ 69–70 (2003) (defendant was charged with robbing Pizza Hut; court held that defendant's statement he made a few days prior to that robbery that he intended to rob Auto Zone was statement of plan or intent; defendant contended statement was inadmissible because his intent was not an issue; court held that, because defendant never raised that intent issue with trial court, defendant waived that argument on appeal).

State v. Montaño, 204 Ariz. 413, 65 P.3d 61, ¶¶ 59–62 (2003) (when witness testified about defendant's gang affiliation, defendant failed to object, and thus waived that issue on appeal).

State v. Fulminante, 193 Ariz. 485, 975 P.2d 75, ¶¶ 64–65 (1999) (because defendant failed to object at trial to evidence of arrangement of victim's clothes, he waived that objection on appeal).

State v. Spreitz, 190 Ariz. 129, 945 P.2d 1260 (1997) (by failing to object to habit evidence for victim, defendant waived issue on appeal).

State v. Jones, 188 Ariz. 388, 937 P.2d 310 (1997) (prosecutor asked medical examiner to compare exhibit 136, which was admitted in evidence, with exhibit 137, which was not admitted in evidence; because defendant did not object to questions about exhibit that was not admitted in evidence, defendant waived issue on appeal).

* *Henricks v. Arizona DES,* 229 Ariz. 47, 270 P.3d 874, ¶ 20 (Ct. App. 2012) (because Henricks failed to object to admission of handwritten documents at administrative hearing, she did not preserve her right to challenge ruling on appeal).

* *State v. Alvarez,* 228 Ariz. 579, 269 P.3d 1203, ¶ 16 n.3 (Ct. App. 2012) (court rejected defendant's contention that he should be excused from objecting to award of restitution because he was "surprised" when trial court ordered restitution; court follows rule that party must make timely and specific objection).

Ritchie v. Krasner, 221 Ariz. 288, 211 P.3d 1272, ¶¶ 46 (Ct App. 2009) (defendant contended trial court abused discretion in precluding evidence of plaintiff's prior felony conviction; court noted that felony conviction was admissible only to attack plaintiff's credibility as witness, and only time plaintiff testified was at deposition; because defendant failed to raise timely plaintiff's conviction during deposition, trial court did not abuse discretion in excluding evidence of plaintiff's felony conviction at trial).

State v. Sucharew, 205 Ariz. 16, 66 P.3d 59, ¶¶ 17 (Ct. App. 2003) (state alleged defendant and Doyle were racing when defendant's vehicle collided with victim's vehicle, killing victim; to obtain his testimony, state granted immunity to Doyle; when cross-examining Doyle, defendant sought to question Doyle about conversations Doyle had with his attorney, and state objected on basis of attorney-client privilege, which trial court sustained; on appeal, defendant contended state lacked standing to assert Doyle's attorney-client privilege; court held defendant waived this issue by not objecting during trial on that basis, noting that both Doyle and his attorney were present when state objected, and if defendant had objected to state's attorney-client privilege objection, Doyle and his attorney could have cured any procedural problem).

State v. Sucharew, 205 Ariz. 16, 66 P.3d 59, ¶¶ 27 (Ct. App. 2003) (state alleged defendant and Doyle were racing when defendant's vehicle collided with victim's vehicle, killing victim; two witnesses testified that, as they saw vehicles drive by, one stated, "There goes your *Fast and Furious* movie"; defendant contended on appeal that, because *Fast and Furious* movie purportedly depicted "punks and thugs engaged in highly illegal activity," trial court should have precluded this evidence under Rule 403; court held that, because defendant failed to object at trial on that basis, defendant waived issue on appeal).

Brown v. U.S.F. & G., 194 Ariz. 85, 977 P.2d 807, ¶¶ 9–11 (Ct. App. 1998) (plaintiff did not file motion in limine by cut-off date imposed by trial court, and instead filed motion asking trial court to reconsider cut-off date and rule on plaintiff's motion to preclude polygraph evidence; trial court denied motion to reconsider; at trial, plaintiff made tactical decision to admit polygraph evidence first; on appeal, plaintiff contended trial court erred in admitting poly-

graph evidence; court held that, because trial court had not ruled on merits of polygraph evidence before trial, plaintiff could have objected at trial if defendant sought to admit that evidence, and because plaintiff did not object, plaintiff could not raise issue on appeal).

Sheppard v. Crow-Baker-Paul No. 1, 192 Ariz. 539, 968 P.2d 612, ¶ 35 (Ct. App. 1998) (because defendant did not raise claim at trial that prior consistent statement was not made prior to time motive to fabricate arose, defendant waived this claim on appeal).

State v. Baldenegro, 188 Ariz. 10, 932 P.2d 275 (Ct. App. 1996) (for assisting and participating in criminal syndicate for benefit of street gang, state had to prove "Carson 13" was criminal street gang, thus evidence of criminal activity by members of "Carson 13" was relevant; because defendant did not object to evidence of misdemeanor activity on basis that A.R.S. § 13-105(7) limits this evidence to felony activity, defendant waived that claim on appeal).

State v. Sullivan, 187 Ariz. 599, 931 P.2d 1109 (Ct. App. 1996) (court noted that, if counsel chose not to object to hearsay for tactical reasons, defendant could not raise issue on appeal, but because state did not allege waiver on appeal, court addressed merits of issue).

State v. Scott, 187 Ariz. 474, 930 P.2d 551 (Ct. App. 1996) (because defendant did not object to trial court's failure to have bench conferences recorded, defendant waived issue on appeal).

State v. Doody, 187 Ariz. 363, 930 P.2d 440 (Ct. App. 1996) (because defendant did not object to redaction of portions of witness's prior testimony, he waived issue for appeal).

State v. Paxton, 186 Ariz. 580, 925 P.2d 721 (Ct. App. 1996) (because defendant did not object at trial, he waived any claim on appeal that trial court erred in allowing witness who had been precluded from testifying on direct to testify on rebuttal).

103.a.025 If a party does not object to the admission of certain evidence and the trial court admits that evidence, and on appeal the matter is remanded for new trial, as long as the appellate court has not ruled on that issue, a party is not precluded from objecting at retrial to the admission of that evidence.

Jimenez v. Wal-Mart Stores, Inc., 206 Ariz. 424, 79 P.3d 673, ¶¶ 10–15 (Ct. App. 2003) (at first trial, defendant did not object to admission of photographs, but did object to their admission upon retrial; court noted, because there was no objection at first trial, trial court never ruled so there was no decision on merits, and on appeal, appellate court did not address any issue relating to those photographs, thus nothing precluded defendant from objecting at retrial to admission of photographs).

103.a.040 To preserve for appeal the question of admission of evidence, a party must make a specific and timely objection; if the party **fails to make a sufficiently specific objection,** the party will have waived the issue on appeal.

State v. Montaño, 204 Ariz. 413, 65 P.3d 61, ¶¶ 55–58 (2003) (defendant contended on appeal that trial court abused discretion under Rule 403 in admitting photographs; state noted defendant only objected generally to admission of photographs; court held that, "Because the appellant's trial counsel did not object on 403 grounds, the argument has been waived.").

State v. Fischer, 219 Ariz. 408, 199 P.3d 663, ¶ 32 (Ct. App. 2008) (defendant's continuing general objection to testimony did not preserve on appeal claim that testimony was hearsay).

State v. Lopez, 217 Ariz. 433, 175 P.3d 682, ¶¶ 4–6 (Ct. App. 2008) (when state asked nurse to read victim's statements about history of assault, defendant objected "to the history"; court held this objection was not sufficiently specific to preserve issue for appeal).

State v. DePiano, 187 Ariz. 41, 926 P.2d 508 (Ct. App. 1995) (objection that evidence was "irrelevant" was not sufficiently specific to support claim on appeal that admission of evidence was not proper under Rule 404(b)), *vacated on other grounds*, 187 Ariz. 27, 926 P.2d 494 (1996).

103.a.050 An objection at trial for one reason or purpose does not preserve for appeal a claim of error based on a different reason or purpose.

State v. Womble, 225 Ariz. 91, 235 P.3d 244, ¶¶ 10–13 (2010) (detective testified that jail informant told him about defendant and that he used that information to get court order to listen to telephone calls; although defendant objected on basis of hearsay, because defendant did not object on basis of Confrontation Clause violation, court reviewed for fundamental error only; because detective testified only about defendant's existence and not about substance of what informant said, testimony did not violate Confrontation Clause).

State v. Moody, 208 Ariz. 424, 94 P.3d 1119, ¶¶ 38–40 (2004) (defendant's motion at trial to preclude expert's testimony because of untimely disclosure of expert's notes did not preserve for appeal claim that trial court should have precluded testimony because expert relied on tainted information).

State v. Rutledge (Sherman), 205 Ariz. 7, 66 P.3d 50, ¶¶ 26–38 (2003) (defendant gave videotaped interview to detective, but did not testify at trial; in closing argument, prosecutor discussed fact that defendant told detective he had been with some girls night of murder, but did not want to give their names; at trial, defendant objected on basis that this argument shifted burden of proof, and on appeal claimed this was comment on defendant's failure to testify; court held defendant failed to make timely objection at trial stating specific ground raised on appeal, and thus waived that objection on appeal).

State v. Montaño, 204 Ariz. 413, 65 P.3d 61, ¶¶ 59–63 (2003) (when witness testified at trial about meaning of defendant's EME tattoo, defendant objected on basis of relevance and foundation; on appeal, defendant contended admission of this evidenced violated Rule 403; court held defendant waived any Rule 403 objection).

* *State v. Butler*, 230 Ariz. 465, 286 P.3d 1074, ¶¶ 19–25 (Ct. App. 2012) (defendant objected to admission of property receipt for "Nike shoe box containing a large amount of U.S. currency" under Rules 401, 403, and 404(b); because defendant did not object on either hearsay or Confrontation Clause grounds, court reviewed for fundamental error only; court concluded there was substantial circumstantial evidence of defendant's guilt, thus defendant failed to establish prejudice).

State v. Kinney, 225 Ariz. 550, 241 P.3d 914, ¶ 7 (Ct. App. 2010) (trial objection that probative value of defendant's statement was substantially outweigh by danger of unfair prejudice did not preserve for appeal contention that police obtained statement in violation of defendant's constitutional rights).

State v. Damper, 223 Ariz. 572, 225 P.3d 1148, ¶ 8 (Ct. App. 2010) ("hearsay" objection did not preserve for appellate review claim that admission of out-of-court text message violated Sixth Amendment right of confrontation).

State v. Lopez, 217 Ariz. 433, 175 P.3d 682, ¶¶ 4–6 (Ct. App. 2008) (when state asked nurse whether victim's injuries were consistent with anal penetration, defendant objected that nurse was not qualified as expert; court held that defendant's objection that nurse was not qualified as expert did not preserve for appeal claim that nurse testified about victim's statements, and those statements were hearsay).

State v. Alvarez, 213 Ariz. 467, 143 P.3d 668, ¶ 7 (Ct. App. 2006) (after victim died, officer testified about what victim said to officer; defendant objected on basis that statement was hearsay; court held defendant's hearsay objection did not preserve claim on appeal that admission of statement violated confrontation clause; court reviewed for fundamental error only, and found no error).

State v. Tyszkiewicz, 209 Ariz. 457, 104 P.3d 188, ¶¶ 8–9 (Ct. App. 2005) (for BAC testing, one officer observed initial portion of deprivation period, and second officer, who was not present during initial portion, observed latter portion of deprivation period; when second officer testified about deprivation period, defendant objected on basis that state did not lay adequate foundation that first officer had actually conducted initial portion of deprivation period; court noted that, because second officer was not present when first officer began observing deprivation period, anything second officer knew would have had to have been based on hearsay, and that defendant's objection that second officer did not have "personal knowledge" of what happened during initial portion was not sufficient to support hearsay objection).

Hernandez v. State, 201 Ariz. 336, 35 P.3d 97, ¶ 21 (Ct. App. 2001) (plaintiff fell off wall at Patagonia Lake Park; defendant offered testimony from park manager of no other accidents at that wall; plaintiff objected on basis of relevance; court held plaintiff should have objected on basis of lack of foundation showing system of obtaining information if there had been accidents, and on basis of Rule 403), *vacated,* 203 Ariz. 196, 52 P.3d 765 (2002).

State v. Tovar, 187 Ariz. 391, 930 P.2d 468 (Ct. App. 1996) (objection at trial under Rule 608(b) did not preserve claim of error under Rule 609(d)).

State v. DePiano, 187 Ariz. 41, 926 P.2d 508 (Ct. App. 1995) (objection that evidence was "irrelevant" was not sufficiently specific to support claim that admission of evidence was not proper under Rule 404(b)), *vacated on other grounds,* 187 Ariz. 27, 926 P.2d 494 (1996).

103.a.060 Objection of "no foundation" is insufficient to preserve the issue; the objecting party must indicate how the foundation is lacking so that the party offering the evidence can overcome the shortcoming, if possible.

State v. Rodriguez, 186 Ariz. 240, 250, 921 P.2d 643, 653 (1996) (defendant objected to improper foundation for admission of earring; because defendant did not identify what foundation was lacking, trial court did not abuse discretion in admitting exhibit).

State v. Guerrero, 173 Ariz. 169, 171, 840 P.2d 1034, 1036 (Ct. App. 1992) (defendant contended on appeal state failed to provide specifics about times, dates, places, or quantities of prior acts; court held that claim of insufficient foundation may not be raised on appeal unless appellant specifically points out to trial court alleged defects in foundation so that opponent may cure any defects).

Packard v. Reidhead, 22 Ariz. App. 420, 423, 528 P.2d 171, 174 (1974) (court noted that appellee laid tenuous foundation for admission of traffic signal installation report, but held appellant's "no foundation" objection was inadequate to preserve issue for review on appeal; purpose of rule is to enable adversary to obviate objection if possible and to permit trial court to make intelligent ruling).

103.a.080 To preserve for appeal the question of admission of evidence, a party must make a specific and timely objection; if the party **fails to object in a timely manner,** the party will have waived the issue on appeal.

State v. Cruz, 218 Ariz. 149, 181 P.3d 196, ¶¶ 99–102 (2008) (officer testified that hammer of gun used to kill victim had been removed and that removal may have been done to facilitate concealment; defendant did not object when testimony given, but next day moved for mistrial claiming that this testimony "implied bad character, bad conduct, a bad act, and that the person that possessed the weapon was engaging in criminal behavior"; court reviewed only for fundamental error, and concluded that, because there was no evidence that defendant had removed hammer from gun, this testimony did not prejudice defendant).

State v. Moody, 208 Ariz. 424, 94 P.3d 1119, ¶¶ 38–40 (2004) (although defendant moved for mistrial based on claim that expert relied on tainted information, defendant did not make that motion until day after expert testified, and because defendant did not make contemporaneous objection while expert was testifying, defendant waived issue on appeal).

In re Estate of Reinen, 198 Ariz. 283, 9 P.3d 314, ¶¶ 5–7 (2000) (defendant did not object to defendant's expert witness's lack of expertise until after witness had finished testifying and had left for California; court held that party must make objection at time when trial court can take appropriate action, such as either before or during testimony, thus defendant waived objection and trial court erred in striking witness's testimony).

103.a.090 To preserve for appeal the question of exclusion of evidence, a party must make a **specific and timely objection,** and must make an offer of proof showing that the excluded evidence would be admissible and relevant, unless either the substance of the evidence is apparent from the context of the record, or the trial court excludes the evidence on substantive rather than evidentiary grounds.

State v. Dixon, 226 Ariz. 545, 250 P.3d 1174, ¶¶ 40–44 (2011) (defendant contended trial court erred in precluding him from introducing entries from victim's diary; defendant failed to make offer of proof, thus court had no basis for determining precisely what evidence was excluded).

State v. Villalobos, 225 Ariz. 74, 235 P.3d 227, ¶¶ 32–36 (2010) (after testimony of state's mental health expert, juror submitted question asking whether it was likely defendant could be significantly reformed with help of medications or therapy; trial court did not submit question stating that "doesn't seem to fall within the realm of what mitigation is about"; court held defendant's potential for rehabilitation was mitigating circumstance, therefore trial court incorrectly concluded it was not, but held no reversible error because expert did not diagnose defendant for treatment nor was his expertise on effects of medication or therapy established, but more importantly, defendant made no offer of proof of what expert would have said if allowed to answer question).

State v. Nordstrom, 200 Ariz. 229, 25 P.3d 717, ¶¶ 35–38 (2001) (although trial court denied defendant's motion to order witness to answer certain questions during deposition, trial court said defendant could ask those questions at trial; because defendant never asked those questions at trial, defendant waived that issue).

State v. Mott, 187 Ariz. 536, 540, 931 P.2d 1046, 1050 (1997) (although defendant withdrew the battered woman syndrome as a defense, she continued to argue that this evidence was relevant on the issue of her intent, thus defendant preserved for review exclusion of this evidence).

State v. Dickens, 187 Ariz. 1, 13–14, 926 P.2d 468, 480–81 (1996) (because defendant did not make offer of proof of what acts he wanted to use to impeach the witness, court was unable to determine whether trial court abused its discretion in precluding those acts under Rule 403).

State v. Atwood, 171 Ariz. 576, 641, 832 P.2d 593, 658 (1992) (because defendant did not object to trial court's limitation on cross-examination, and did not make offer of proof of what the testimony would have been, defendant waived that issue on appeal).

State v. Bravo, 158 Ariz. 364, 377, 762 P.2d 1318, 1331 (1988) (because defendant never objected to witness's invocation of Fifth Amendment privilege, defendant waived that issue for appeal).

State v. Davis, 205 Ariz. 174, 68 P.3d 127, ¶¶ 31–32 (Ct. App. 2003) (victim left with defendant; 3 days later, defendant told girlfriend he had killed victim; defendant then confessed to police and took them to location of victim's body; at trial, defendant sought to introduce following evidence that he contended showed another person committed crime: night of murder, witness had seen M.H. and T.J. acting suspiciously and with injuries on their arms, and said victim had told her she was pregnant with M.H.'s child; another witness said he had overheard M.H. and T.J. making incriminating statements about their role in victim's death; suitcase characterized as portable methamphetamine lab had been found near where victim was killed, and when M.H. was arrested 1 month after murder, he had portable methamphetamine lab in car; court excluded this evidence as not relevant; on appeal, defendant contended this violated his constitutional right to present evidence; court held defendant waived this claim by not raising it at trial).

Taeger v. Catholic Fam. & Com. Serv., 196 Ariz. 285, 995 P.2d 721, ¶ 38 (Ct. App. 1999) (plaintiffs attempted to introduce statements that trial court excluded as hearsay; because plaintiffs made no offer of proof for these statements, plaintiffs waived issue on appeal).

State v. Wooten, 193 Ariz. 357, 972 P.2d 993, ¶¶ 29–30 (Ct. App. 1998) (trial court granted state's motion to preclude evidence that someone other than defendant killed victim; defendant conceded much of evidence in question was admitted at trial, and failed to make offer of proof to establish what evidence he was precluded from presenting).

Cervantes v. Rijlaarsdam, 190 Ariz. 396, 398–99, 949 P.2d 56, 58–59 (Ct. App. 1997) (plaintiff's doctor testified plaintiff did not have CT scan because he did not have health insurance; because defendants did not make offer of proof of what they expected to elicit from doctor on cross-examination, court could not find that trial court erred in limiting cross-examination).

State v. Doody, 187 Ariz. 363, 373, 930 P.2d 440, 450 (Ct. App. 1996) (because trial court allowed defendant to present evidence of circumstances of taking of his statement and statements of Tucson Four, and because he made no offer of proof of what additional evidence he wanted to present, defendant provided no basis for further review by court).

103.a.110 An offer of proof at trial for one reason or purpose does not preserve for appeal a claim of error based on a different reason or purpose.

State v. Tankersley, 191 Ariz. 359, 956 P.2d 486, ¶ 48 (1998) (because defendant's claim at trial was hearsay, statement was a statement against interest, and he never claimed hearsay statement was admissible as a public record, defendant waived this argument on appeal).

Salt River Project v. Miller Park LLC, 216 Ariz. 161, 164 P.3d 667, ¶ 19 (Ct. App. 2007) (because plaintiff offered evidence of value in owner's tax protest material only to impeach owner's testimony about value of property in condemnation action, court would not consider on appeal claim that evidence should have been admissible as admission by owner); *vac'd in part,* 218 Ariz. 246, 183 P.3d 497 (2008).

103.a.130 Once a party has made a motion in limine or an objection to a certain type of evidence and the trial court has ruled against it, the party need not continually object to the same evidence, even if it is proffered by additional witnesses or additional testimony.

State v. Anthony, 218 Ariz. 439, 189 P.3d 366, ¶ 38 (2008) (because defendant filed written pretrial motion to preclude admission of other act evidence and trial court had oral argument, defendant preserved issue for appeal even though he never objected to admission of other act evidence during trial).

103.a.150 If the trial court's ruling is not definite, or if the trial court's ruling is definite but the evidence exceeds the purpose for which the trial court ruled it would be admissible, the party must object further to preserve the issue on appeal.

State v. Connor, 215 Ariz. 553, 161 P.3d 596, ¶¶ 29–35 (Ct. App. 2007) (trial court ruled that evidence that victim's family and friends had told victim they believed defendant had burglarized victim's apartment and victim should stay away from him was admissible to rebut defendant's testimony that he was friends with victim and was welcome in his apartment; to avoid prejudice to defendant, trial court instructed jurors there was no evidence defendant had in fact burglarized apartment; defendant contended issue of burglary improperly expanded with testimony about defendant's whereabouts during burglary; court noted defendant made no objection to this expanded scope of testimony, and thus waived issue on appeal).

103.a.160 Once the trial court has ruled against a party on an objection or offer of proof, the party may change its strategy and question the witness without waiving the right to challenge the ruling on appeal.

State v. Rockwell, 161 Ariz. 5, 9–10, 775 P.2d 1069, 1073–74 (1989) (usually stipulation waives right to object to evidence on appeal; however, because counsel offered stipulation only after trial court had overruled defendant's objection and ruled that state could introduce evidence, defendant preserved that issue for appeal).

State v. Lindsey, 149 Ariz. 472, 475–77, 720 P.2d 73, 76–78 (1986) (once trial court admitted testimony over defendant's objection, defendant did not waive issue by cross-examining witness).

State v. Williams, 133 Ariz. 220, 224, 650 P.2d 1202, 1206 (1982) (defendant filed pretrial motion in limine to preclude tape-recorded statements witness made to police, which trial court denied; at trial, defendant then introduced tapes in evidence; court held that pretrial motion in limine preserved admissibility question for appeal, and that subsequent change in strategy because of trial court's adverse decision on motion in limine did not waive issue on appeal).

State v. Hicks, 133 Ariz. 64, 69, 649 P.2d 267, 272 (1982) (defendant objected to evidence of victim's character, but trial court overruled objection; defendant on cross-examination asked another witness about victim's character; state contended defendant waived any objection to evidence of victim's character by cross-examining witness; court held that, after trial court overruled defendant's objection to character evidence, defendant's attempt to minimize effect of erroneous ruling by cross-examining witness did not waive objection).

103.a.163 Once the trial court has ruled that evidence of a prior conviction is admissible, the defendant does not waive this issue by testifying and admitting the prior conviction; however, if the defendant does not testify, the defendant may not question on appeal the trial court's ruling.

State v. Smyers, 207 Ariz. 314, 86 P.3d 370, ¶¶ 5–15 (2004) (trial court ruled that defendant could be impeached with his prior conviction for attempted child abuse, and would allow in evidence (1) name of offense, (2) court, (3) date of offense, and (4) whether defendant was assisted by counsel; trial court would not allow in evidence (1) class of offense or (2) facts of offense; because defendant chose not to testify, defendant waived on appeal correctness of trial court's ruling).

103.a.165 Once the trial court has ruled that the state may ask defendant's character witnesses on cross-examination whether they know about defendant's prior conviction, if defendant does not then call those character witnesses to testify, defendant may not question on appeal the trial court's ruling.

State v. Romar, 221 Ariz. 342, 212 P.3d 34, ¶¶ 5–10 (Ct. App. 2009) (defendant was charged with sexual offenses against child; defendant had two 22-year-old convictions for sexual abuse; defendant indicated he would call eight to ten character witnesses; trial court ruled that state would be permitted on cross-examination to ask character witnesses if they knew defendant had two prior convictions, but would not allow state to specify name or nature of offenses unless character witnesses gave their opinion that defendant would not commit "such a crime" (opinion does not state whether "such a crime" is offense charged or prior offense); at trial, defendant did not call any character witnesses; court held that, by failing to call character witnesses, defendant failed to preserve his claim of error, and thus court declined to consider correctness of trial court's ruling).

103.a.167 Once the trial court has ruled on a certain issue and a party has adopted a strategy in reliance on that ruling, if the trial court later changes its ruling and if this change prejudices the party, the party may be entitled to a new trial or reversal on appeal.

Henry v. Healthpartners of Southern Arizona, 203 Ariz. 393, 55 P.3d 87, ¶¶ 19–20 (Ct. App. 2002) (medical malpractice action resulting from patient's death from cancer was filed against decedent's doctor, radiologist employed by medical center, and medical center (TMC/HSA); plaintiff settled with doctors and went to trial against TMC/HSA; TMC/HSA named doctors as non-parties at fault; TMC/HSA asked to be allowed to read to jurors factual allegations contained in plaintiff's complaint; trial court denied this request, but after plaintiff had presented her case, reversed itself and allowed TMC/HSA to read factual allegations to jurors; after verdict in favor of TMC/HSA, trial court granted new trial; court upheld granting of new trial, holding that reading of allegations was essentially an error in admission of evidence under Civ. R. P. 59(a)(6)).

103.a.170 Before a party is entitled to a new trial, it must first have exhausted all other remedies, such as making timely objections, because a party will not be permitted to take its chances of obtaining a favorable verdict or decision, and then for the first time avail itself of the point on a motion for a new trial.

State v. DePiano, 187 Ariz. 41, 926 P.2d 508 (Ct. App. 1995) (because defendant did not make motion to strike and only objected to evidence on ground that it was "irrelevant," defendant waived claim on appeal that admission of evidence was not proper under Rule 404(b)), *vacated on other grounds,* 187 Ariz. 27, 926 P.2d 494 (1996).

103.a.180 A party is not required to present a claim in a motion for new trial before the party may raise that claim on appeal.

Brown v. U.S.F. & G., 194 Ariz. 85, 977 P.2d 807, ¶¶ 12–14 (Ct. App. 1998) (during defendant's opening statement, plaintiff objected to statement that plaintiff had "long history of fire loss claims," and trial court overruled objection; during trial, plaintiff attempted to "draw the sting" by introducing that evidence first; plaintiff permitted to raise on appeal trial court's ruling even though plaintiff then introduced evidence himself).

103.a.190 "Invited error" occurs when a party asks a certain question, or asks the trial court to take some action, or specifically does not object to certain evidence, that results in otherwise inadmissible evidence being introduced; in such a case, a party may not object on appeal to an error the party itself created or invited.

State v. Pandeli, 215 Ariz. 514, 161 P.3d 557, ¶¶ 49–50 (2007) (defendant contended that trial court improperly allowed former girlfriend to testify that defendant molested her daughter; court noted trial court asked whether defendant's attorney objected to that evidence, and defendant's attorney stated that he did not; court held that defendant invited any error).

State v. Anderson, 210 Ariz. 327, 111 P.3d 369, ¶ 44 (2005) (defendant contended evidence of sexual relationship between him (age 48) and 14-year-old female co-defendant was extremely prejudicial and should have been excluded; because defendant's attorney elicited this evidence, any error was invited).

State v. Moody, 208 Ariz. 424, 94 P.3d 1119, ¶¶ 111 (2004) (defendant's attorney asked state's expert whether defendant had been "called a malingerer, which is a medical term for liar," to which expert responded, "Yes"; assuming that expert's "Yes" answer meant "Yes, malingerer is a medical term for liar," if that testimony was error, any error was invited by defendant's attorney's question).

State v. Mann, 188 Ariz. 220, 934 P.2d 784 (1997) (because defendant invited trial court at sentencing to consider evidence of fatal traffic accident in which defendant was involved, defendant could not complain on appeal that trial court considered that evidence).

103.a.200 A party will "open the door" when the party introduces evidence that makes certain otherwise inadmissible evidence admissible; in such a case, the party may not object on appeal because the party itself opened the door to admission of otherwise inadmissible evidence.

State v. Andriano, 215 Ariz. 497, 161 P.3d 540, ¶ 29 (2007) (once defendant's expert testified that defendant needed to use personal lubricant when she had sex with her husband, this opened door to prosecutor's asking expert whether defendant needed to use personal lubricant when

she had sex with her extramarital affair, because this rebutted expert's suggestion that defendant needed to use personal lubricant with her husband because her husband was abusive spouse).

State v. Blakley, 204 Ariz. 429, 65 P.3d 77, ¶¶ 33–39 (2003) (trial court precluding expert from giving opinion on whether interrogation tactics in this case were coercive and giving opinion whether defendant's confession was voluntary; defendant contended that, when state asked expert on cross-examination whether he asked defendant about his mental condition and any counseling he may have had, this "opened the door" to asking expert to relate to jurors statements defendant had made; court noted that state was merely asking about areas and types of questions asked and did not ask about specific answers, so state did not "open the door").

State v. Harrod, 200 Ariz. 309, 26 P.3d 492, ¶¶ 27–28 (2001) (in case-in-chief, defendant suggested ex-wife and her family were lying about his involvement in murder because of bitterness over divorce; court held this opened door and allowed state to call ex-wife in rebuttal to ask her why she had divorced defendant; ex-wife testified that she divorced him because he told her he had killed victim).

State v. Doerr, 193 Ariz. 56, 969 P.2d 1168, ¶¶ 25–27 (1998) (on cross-examination, defendant elicited testimony from officer that he did not believe defendant was truthful during questioning on day of arrest; on rebuttal, state permitted to ask officer why he did not believe defendant was being truthful).

State v. Mann, 188 Ariz. 220, 934 P.2d 784 (1997) (when defendant told psychologist he could not talk about the murders, but then used significant portions of the report for mitigation, defendant opened the door to use of full report).

State v. Soto-Fong, 187 Ariz. 186, 928 P.2d 610 (1996) (in September, person gave one statement to police describing what co-defendants told him in August, and this statement tended to exculpate defendant; in November, person gave another statement to police describing what co-defendants told him in August, and this statement tended to inculpate defendant; trial court properly ruled that, if defendant chose to introduce testimony about September statement, state could introduce testimony about November statement).

State v. Connor, 215 Ariz. 553, 161 P.3d 596, ¶¶ 29–35 (Ct. App. 2007) (defendant was charged with first-degree murder; evidence that victim's apartment had been burglarized and that family and friends had told victim they believed defendant had done the burglary and victim should stay away from defendant admissible to rebut defendant's testimony that he was friends with victim and was welcome in his apartment; to avoid prejudice to defendant, trial court instructed jurors there was no evidence defendant had in fact burglarized apartment; defendant contended issue of burglary improperly expanded with testimony about defendant's whereabouts during burglary, but acknowledged that his counsel initiated questioning in this area and therefore opened door to this inquiry).

Elia v. Pifer, 194 Ariz. 74, 977 P.2d 796, ¶¶ 13–23 (Ct. App. 1998) (defendant was plaintiff's former attorney in dissolution action; plaintiff sued defendant for legal malpractice, claiming defendant did not have authority to agree to terms of proposed settlement agreement, and planned to introduce telephone message slip found in defendant's files purportedly saying not to agree to terms; in deposition testimony, defendant said she did not believe message slip was written in her office, and that plaintiff had come into her office and "rampaged" through his file; prior to trial, attorneys agreed message slip was admissible; in opening statement, plain-

tiff's attorney predicted that defendant would testify that plaintiff somehow got into file and planted message slip there; defendant's attorney then claimed that statement opened the door to defendant's state of mind and thus he intended to introduce evidence that Dental Board had found that plaintiff had fraudulently altered patient's records; trial court allowed defendant's attorney to say that in opening statement, and allowed defendant to testify that she thought defendant had planted the message slip because Dental Board had found plaintiff "guilty" of altering records; court held that relevance and authenticity of message slip were not at issue at start of case because parties had stipulated to its admissibility, but when plaintiff suggested in opening statement that defendant might accuse plaintiff of fabrication, that made authenticity of message slip relevant, but it did not open the door and make defendant's state of mind relevant, thus trial court erred in allowing admission of character evidence about plaintiff, resulting in reversal).

State v. Tovar, 187 Ariz. 391, 930 P.2d 468 (Ct. App. 1996) (although state's questioning about handgun was irrelevant, defendant did not object, and when defendant gave false answer, he opened door to evidence that otherwise would have been inadmissible).

State v. Paxton, 186 Ariz. 580, 925 P.2d 721 (Ct. App. 1996) (because defendant presented evidence in his case that made witness's testimony relevant, trial court properly allowed witness who had been precluded from testifying on direct to testify on rebuttal).

State v. DePiano, 187 Ariz. 41, 926 P.2d 508 (Ct. App. 1995) (because defendant asked witness whether certain portions of note were subject to different types of interpretation, she opened door to testimony of other witnesses about their interpretation of note), *vacated on other grounds,* 187 Ariz. 27, 926 P.2d 494 (1996).

103.a.205 Even when a party "opens the door" by introducing certain evidence, the evidence that the other party then seeks to introduce must still satisfy the Confrontation Clause.

State v. Huerstel, 206 Ariz. 93, 75 P.3d 698, ¶¶ 35–36 (2003) (defendant introduced statements from two inmates who claimed codefendant told them he shot all three victims; trial court then allowed state to introduce codefendant's statement to police in which he claimed defendant shot all three victims; state claimed defendant "opened the door" to admission of codefendant's statement; court held accomplice confession implicating defendant was not within firmly rooted exception to hearsay rule, and trial court made no finding codefendant's statement to police bore sufficient indicia of reliability, thus evidence did not satisfy Confrontation Clause, so trial court erred in admitting statement).

103.a.210 A party may not justify admission of inadmissible evidence by claiming it was in response to other inadmissible evidence that the other party was able to have admitted; the proper procedure is for the party to object in the first place when the other party attempts to introduce the inadmissible evidence.

State v. Dunlap, 187 Ariz. 441, 930 P.2d 518 (Ct. App. 1996) (even had defendant's evidence been inadmissible hearsay, it would not have justified admission of state's hearsay evidence).

103.a.230 A party is not entitled to a reversal on appeal on the basis of erroneously admitted evidence that did not affect a substantial right of the party, and the prejudice to the substantial rights of the party will not be presumed, it must appear in the record.

State v. Anthony, 218 Ariz. 439, 189 P.3d 366,¶¶ 39–42 (2008) (defendant was convicted of killing wife and step-children; trial court allowed state to present evidence tending to show defendant molested 14-year old step-daughter; state argued that molestation was defendant's motive for killing her; court concluded there was not enough evidence for jurors to conclude by clear and convincing evidence that molestation occurred and thus trial court should not have admitted that evidence; because claim that defendant molested step-daughter was prejudicial to defendant and because molestation was repeated theme of state's closing argument, court was unable to conclude beyond reasonable doubt improperly admitted allegation of molestation did not affect verdict, and thus reversed conviction).

State v. Cruz, 218 Ariz. 149, 181 P.3d 196, ¶¶ 99–102 (2008) (officer testified that hammer of gun used to kill victim had been removed and that removal may have been done to facilitate concealment; defendant did not object when testimony given, but next day moved for mistrial claiming that this testimony "implied bad character, bad conduct, a bad act, and that the person that possessed the weapon was engaging in criminal behavior"; court reviewed only for fundamental error, and concluded that, because there was no evidence that defendant had removed hammer from gun, this testimony did not prejudice defendant).

State v. Bocharski, 200 Ariz. 50, 22 P.3d 43, ¶¶ 28–34 (2001) (court concluded photographs met bare minimum standard of relevance, but that probative value was substantially outweighed by danger of unfair prejudice, thus trial court should have excluded Exhibits 46–47, but found any error to be harmless in light of other evidence).

State v. Bocharski, 200 Ariz. 50, 22 P.3d 43, ¶¶ 35–39 (2001) (while in jail, defendant allegedly assaulted fellow inmate; trial court admitted by stipulation inmate's statement of what defendant said during assault; court held defendant's statement, "If it were up to me, you would be dead right now," had no relevance, thus it was error to admit statement, but any error was harmless).

State v. Hoskins, 199 Ariz. 127, 14 P.3d 977, ¶¶ 65–67 (2001) (detective testified about statements witness made to him about defendant's wanting to commit car-jacking and kill victim; although defendant had claimed witness was biased and had motive to fabricate, court concluded that bias and motive to fabricate arose prior to time witness made statements to detective, but held that, even if testimony was improperly admitted, any error was harmless because witness testified and told jurors same things that detective told them).

State v. Hoskins, 199 Ariz. 127, 14 P.3d 977, ¶¶ 54–58 (2001) (prosecutor asked witness when he had last seen defendant, and witness said it was when they both were arrested as juveniles while making "beer run"; court noted witness gave this testimony in violation of trial court's order, but held any error was harmless in light of other evidence presented).

State v. Jones, 197 Ariz. 290, 4 P.3d 345, ¶¶ 17–18 (2000) (defendant implied witness had motive to lie because witness, rather than defendant, was responsible for killings; because motive to fabricate would have arisen at time of killing, statement was made after motive arose, thus trial court erred in admitting prior statement; because defendant thoroughly impeached witness, any error was harmless).

State v. Doerr, 193 Ariz. 56, 969 P.2d 1168, ¶¶ 29, 31–33 (1998) (court held that enlarged photograph of victim when alive was not relevant, and there was danger that such photograph would cause sympathy for victim, but concluded admission of photograph did not materially affect verdict in light of overwhelming physical evidence).

State v. Spreitz, 190 Ariz. 129, 945 P.2d 1260 (1997) (photographs of victim after decomposing in desert heat for 3 days and showing insect activity had little if any probative value, thus trial court erred in not finding probative value was substantially outweighed by prejudicial effect; because of evidence against defendant, including his un-coerced confession, no prejudice was found).

State v. Lacy, 187 Ariz. 340, 929 P.2d 1288 (1996) (although trial court erred in admitting evidence of subsequent burglary, because jurors already knew defendant committed other burglaries and because trial court gave a proper limiting instruction, error was harmless).

Fuentes v. Fuentes, 209 Ariz. 51, 97 P.3d 876, ¶¶ 24–25 (Ct. App. 2004) (exhibit was copy of budget wife prepared for trial; because this budget of average anticipated monthly expenses was out-of-court statement offered to prove truth of matters asserted, it was hearsay, even though wife discussed budget while testifying; court concluded admission of exhibit did not prejudice husband because (1) wife testified and was subject to cross-examination, (2) information in exhibit was similar to affidavit of financial information that was admitted at trial, (3) admission of this type of evidence is fairly routine in dissolution proceedings, and (4) this was bench trial and court assumed trial court considered only competent evidence).

State v. Beasley, 205 Ariz. 334, 70 P.3d 463, ¶¶ 16–26 (Ct. App. 2003) (although trial court erred in admitting for impeachment nature of prior convictions without balancing prejudicial effect of nature of prior convictions against probative value of nature of prior convictions, evidence against defendant was so strong that any error was harmless).

Hernandez v. State, 201 Ariz. 336, 35 P.3d 97, ¶ 18 (Ct. App. 2001) (plaintiff fell off wall at Patagonia Lake Park; because plaintiff testified there was no trail and that he stepped off retaining wall, notice of claim letter to state from plaintiff's attorney stating plaintiff was walking on trail and stepped off cliff was admissible as prior inconsistent statement; because plaintiff testified he did not write, verify, or even see notice of claim letter before trial, admission of letter did not prejudice plaintiff), *vacated,* 203 Ariz. 196, 52 P.3d 765 (2002).

State v. Garcia, 200 Ariz. 471, 28 P.3d 327, ¶¶ 41–42 (Ct. App. 2001) (because victim testified about how defendant molested her and physician specializing in sexual abuse testified that victim's hymen was almost totally destroyed and that destruction would have had to have happened in way consistent with victim's testimony, error in admitting evidence of other acts committed by defendant against victim was harmless).

In re Anthony H., 196 Ariz. 200, 994 P.2d 407, ¶ 13 (Ct. App. 1999) (although trial court erred in admitting evidence of juvenile's juvenile adjudication, evidence that juvenile committed offense was overwhelming; admission of evidence of juvenile adjudication was not prejudicial).

Brown v. U.S.F. & G., 194 Ariz. 85, 977 P.2d 807, ¶¶ 19–22 (Ct. App. 1998) (insurance company defended refusal to pay claim on basis that plaintiff had breached contract by misrepresenting material facts on insurance application and by intentionally setting fire; even if it had been error to admit evidence plaintiff's "long history of fire loss claims," there was sufficient evidence that plaintiff set fire himself, so any error would have been harmless).

Sheppard v. Crow-Baker-Paul No. 1, 192 Ariz. 539, 968 P.2d 612, ¶ 36 (Ct. App. 1998) (because parent's testimony about what their son said about how injury happened were general and innocuous when compared to son's testimony, defendant failed to show prejudice).

State v. Alatorre, 191 Ariz. 208, 953 P.2d 1261, ¶¶ 18–19 (Ct. App. 1998) (defendant was charged with sexual acts with 8-year-old victim, evidence that defendant struck victim in stomach on an unspecified occasion was not evidence of prior sexual offense and thus not propensity, and did not complete the story, and thus should not have been admitted; in light of other evidence, error was harmless).

State v. Lummus, 190 Ariz. 569, 950 P.2d 1190 (Ct. App. 1997) (court was concerned that officer testified that, on an intoxication scale of 1 to 10, defendant was a 10+, but held that error was harmless beyond a reasonable doubt because of other evidence).

State v. Jones, 188 Ariz. 534, 937 P.2d 1182 (Ct. App. 1996) (because victim unequivocally identified defendant as one who molested her, and because defendant never claimed that someone else committed acts of molestation, doctor's testimony that victim said defendant molested her was harmless).

State v. DePiano, 187 Ariz. 41, 926 P.2d 508 (Ct. App. 1995) (because note was admitted in evidence and thus jurors could draw their own conclusions what it meant, any error in admitting testimony of other witnesses of their interpretation of note was harmless), *vacated on other grounds,* 187 Ariz. 27, 926 P.2d 494 (1996).

103.a.240 Erroneous admission of cumulative evidence does not require reversal.

State v. Dunlap, 187 Ariz. 441, 458, 930 P.2d 518, 535 (Ct. App. 1996) (because state's hearsay evidence was cumulative, any error in its admission was harmless).

State v. Riggs, 186 Ariz. 573, 925 P.2d 714 (Ct. App. 1996) (*rev. granted* 10/21/96) (because defendant admitted he thought there were insufficient funds in his account, and because authenticity of signature card was not an issue, any error in admission of bank records would have been harmless).

State v. Riggs, 186 Ariz. 573, 925 P.2d 714 (Ct. App. 1996) (*rev. granted* 10/21/96) (because defendant's defense was that he had permission to cash checks in question, any error in admission of handwriting examiner's opinion that signature on checks did not match defendant's signature on signature card would have been harmless).

103.a.250 A party is entitled to a reversal on appeal on the basis of erroneously admitted evidence if it affected a substantial right of the party.

State v. Green, 200 Ariz. 496, 29 P.3d 271, ¶¶ 21–23 (2001) (court held trial court erred in admitting 12-year-old felony under Rule 609(b) because it considered only one factor (centrality of credibility issue) and did not consider other factors; court held it could not conclude that error did not affect verdict, and thus reversed conviction).

State v. Bass, 198 Ariz. 571, 12 P.3d 796, ¶¶ 39–46 (2000) (hearsay statement did not satisfy requirements for excited utterance, thus trial court erred in admitting statement; because there was no showing beyond a reasonable doubt that statement did not affect jurors' verdict, court reversed conviction).

State v. Fulminante, 193 Ariz. 485, 975 P.2d 75, ¶ 10 (1999) (trial court erred in admitting victim's hearsay statements reflecting her belief about defendant's future conduct, and admission prejudiced defendant, requiring a new trial).

State v. Bronson, 204 Ariz. 321, 63 P.3d 1058, ¶¶ 29–36 (Ct. App. 2003) (court held admission of transcript of accomplice's interview conducted by defendant's attorney was error; court concluded elements of burglary conviction were based upon interview statements and that jurors relied heavily on those statements, and these statements were critical to refute defendant's mere presence defense, thus state failed to show admission of statement was harmless).

Ogden v. J.M. Steel Erecting, Inc., 201 Ariz. 32, 31 P.3d 806, ¶¶ 36–38, 40 (Ct. App. 2001) (in order to prove driving record of truck driver who caused accident, plaintiffs presented truck driver's MVD record (listing three prior offenses) and police report of investigating officer, which contained supplement by another officer purporting to show truck driver's alleged driving record (listing 10 additional prior offenses); court held trial court erred in admitting supplement, and because it allowed jurors to conclude defendant should never have allowed truck driver to drive defendant's truck, defendant was prejudiced).

State v. Garcia, 200 Ariz. 471, 28 P.3d 327, ¶¶ 43–44 (Ct. App. 2001) (because evidence of indecent exposure was weak, error in admitting evidence of other acts committed by defendant against victim was not harmless).

City of Phoenix v. Wilson, 197 Ariz. 456, 4 P.3d 999, ¶ 19 (Ct. App. 2000) (court stated "when evidence is improperly admitted, prejudice is presumed"), *vacated,* 200 Ariz. 2, 21 P.3d 388 (2001).

State v. Taylor, 196 Ariz. 584, 2 P.3d 674, ¶¶ 15–17 (Ct. App. 1999) (trial court erred in admitting pretrial videotaped statement made by minor victim; because credibility was primary issue and admission of videotaped statement allowed state to present victim's testimony, without opportunity for cross-examination, error in admitting statement was not harmless).

State v. Vigil, 195 Ariz. 189, 986 P.2d 222, ¶¶ 17–22 (Ct. App. 1999) (no one disputed fact that defendant was in car, thus identity was not an issue; only issue was whether defendant shot gun from car; because defendant's prior and subsequent acts of throwing objects at victim's house did not make it more likely that defendant fired gun at victim, trial court erred in admitting this evidence; because there was no other evidence corroborating testimony of victim and mother that defendant shot at victim, erroneous admission of this other act evidence was not harmless).

State v. Reimer, 189 Ariz. 239, 941 P.2d 912 (Ct. App. 1997) (when victim gave different version when testifying, trial court erred in allowing officer to give opinion that victim was not lying when she gave version at time of assault; because outcome of case depended on credibility of victim's statement to officer at time of assault, court found error was prejudicial).

103.a.260 A party is not entitled to a reversal on appeal on the basis of erroneously excluded evidence that did not affect a substantial right of the party, and the prejudice to the substantial rights of the party will not be presumed, it must appear in the record.

State v. Lehr, 201 Ariz. 509, 38 P.3d 1172, ¶¶ 32–35 (2002) (court held trial court erred in precluding defendant from cross-examining witness about laboratory procedure used in DNA analysis; because non-DNA evidence was sufficient to sustain convictions for certain counts, court affirmed convictions on those counts).

State v. Nordstrom, 200 Ariz. 229, 25 P.3d 717, ¶¶ 73–75 (2001) (state called supervisor of AzDOC home arrest program to rebut testimony of defendant's brother's parole officer, who testified how electronic bracelet monitoring system could be defeated; court admitted evidence of lawsuit filed against AzDOC by victims of defendant's crimes alleging negligent supervision of defendant, other participant in crimes, and defendant's brother, but precluded defendant from questioning supervisor about lawsuit because, in pre-trial interview, supervisor denied any knowledge of lawsuit; court held trial court should have allowed questioning of supervisor to explore any motive to fabricate, but held any error was harmless because nothing suggested supervisor had any knowledge of lawsuit).

State v. Wassenaar, 215 Ariz. 565, 161 P.3d 608, ¶¶ 34–35 (Ct. App. 2007) (defendant claimed trial court erred in striking testimony that he had never previously assaulted correction officer; court held it did not have to address whether trial court erred because other evidence previously admitted showed defendant had no disciplinary actions for assaulting AzDOC personnel).

State v. Jeffrey, 203 Ariz. 111, 50 P.3d 861, ¶¶ 13–16 (Ct. App. 2002) (in home invasion, defendant and cohort demanded drugs and money; when police arrived, cohort shot and killed himself; defendant was charged with four counts of kidnapping, and claimed duress, contending that, because of erratic and violent behavior of cohort, she felt compelled to assist in home invasion; defendant claimed trial court erred in precluding evidence of cohort's earlier suicide attempt, contending this evidence was relevant (material) to whether she acted under duress and was relevant (relevance) because it made it more likely she acted under duress; court held, in light of other evidence, any error in precluding this evidence was harmless).

Taeger v. Catholic Fam. & Com. Serv., 196 Ariz. 285, 995 P.2d 721, ¶ 38 (Ct. App. 1999) (because plaintiffs were able to introduce in other ways evidence that trial court excluded, plaintiffs were not prejudiced).

State v. Doody, 187 Ariz. 363, 930 P.2d 440 (Ct. App. 1996) (although precluded evidence would have negated premeditation, it would have shown knowing participation in robbery; because jurors convicted defendant of felony murder, any error in preclusion was harmless).

103.a.270 Erroneous exclusion of cumulative evidence does not require reversal.

State v. Wassenaar, 215 Ariz. 565, 161 P.3d 608, ¶¶ 34–35 (Ct. App. 2007) (defendant claimed trial court erred in striking testimony that he had never previously assaulted correction officer; court held it did not have to address whether trial court erred because other evidence previously admitted showed defendant had no disciplinary actions for assaulting AzDOC personnel).

State v. Dunlap, 187 Ariz. 441, 456–47, 930 P.2d 518, 533–34 (Ct. App. 1996) (because defendant had thoroughly attacked witness's credibility, any error in excluding other impeachment evidence was harmless).

103.a.280 A party is entitled to a reversal on appeal on the basis of erroneously excluded evidence if it affected a substantial right of the party.

State v. Prion, 203 Ariz. 157, 52 P.3d 189, ¶¶ 19–27 (2002) (because evidence that another person could have committed charged offense was sufficient to create reasonable doubt about defendant's guilt, that evidence was relevant and thus trial court erred in excluding it; because of relative strength to evidence against defendant and against other person, exclusion was not harmless, thus defendant was entitled to new trial).

State v. Lehr, 201 Ariz. 509, 38 P.3d 1172, ¶¶ 32–41 (2002) (court held trial court erred in precluding defendant from cross-examining witness about laboratory procedure used in DNA analysis; because non-DNA evidence was not sufficient to sustain convictions for certain counts, court reversed convictions on those counts).

State v. Speers, 209 Ariz. 125, 98 P.3d 560, ¶¶ 34–36 (Ct. App. 2004) (defendant was charged with 18 counts of sexual exploitation of minors based on computer images; trial court admitted as propensity evidence testimony from two second-grade students of alleged misconduct with them; court held that testimony from expert witness about suggestive interview techniques was admissible and that trial court erred in precluding this evidence, and because court could not conclude beyond reasonable doubt that jurors would have reached same verdict if they had heard this evidence, defendant was entitled to new trial).

Paragraph (b) — Record of offer and ruling.

103.b.010 The appellant has the duty to make a record at trial to support the claim of error on appeal, and absent such a record, the appellate court will presume that the evidence presented to the trial court was sufficient to maintain its evidentiary rulings.

Salt River Project v. Miller Park LLC, 218 Ariz. 246, 183 P.3d 497, ¶¶ 23–25 (2008) (in condemnation action, defendant sought to preclude statements in defendant's previous tax protest that full cash value of property was certain figure, which was less than amount defendant requested in condemnation action; defendant moved to preclude evidence under both Rule 402 and 403; in granting motion to preclude, trial court did not specify whether its ruling was based on Rule 402, Rule 403, or both; on appeal, plaintiff in effect asked court to presume trial court relied only on Rule 402; court held that to extent trial court's ruling was ambiguous, it was incumbent on plaintiff to seek to clarify record).

Kline v. Kline, 221 Ariz. 564, 212 P.3d 902, ¶¶ 7–10, 26–33 (Ct. App. 2009) (in civil case, wife filed third-party complaint against husband, who was properly served; trial court held default hearing, which husband did not attend; trial court approved factual findings and conclusions of law proposed by wife, and ordered that husband pay wife $285,155.56 compensatory damages and $100,000 punitive damages; because husband did not provide to appellate court transcript of default hearing, court presumed record supported trial court's decision).

In re Jaramillo, 217 Ariz. 460, 176 P.3d 28, ¶ 18 (Ct. App. 2008) (in sexually violent persons case, Jaramillo asked trial court to exclude evidence of three prior sexual acts, and cited Rule 403 in his motion; on appeal, Jaramillo claimed trial court failed to conduct Rule 403 analysis; court stated that, although trial court made no express finding under Rule 403, record sufficiently demonstrated that trial court considered and balanced necessary factors in its ruling; to extent Jaramillo claimed trial court erred in not making express findings, Jaramillo waived that issue by failing to request that trial court make such findings).

State v. Miles, 211 Ariz. 475, 123 P.3d 669, ¶ 4 n.1 (Ct. App. 2005) (defendant caused collision that injured his passenger (victim); defendant moved to preclude introduction of victim's medical records and testimony about seriousness of victim's injuries; defendant did not make transcript of hearing on his motion part of record on appeal; court presumed that any information about relationship between defendant and victim was discussed at hearing and presumed that missing portions supported trial court's ruling allowing introduction of medical records and testimony about victim).

Romero v. Southwest Ambulance Corp., 211 Ariz. 200, 119 P.3d 467, ¶¶ 2–4 (Ct. App. 2005) (in wrongful death action, plaintiff contended trial court erred in admitting evidence of decedent's past illegal drug use, substance abuse treatment, criminal record, and diagnosis of hepatitis C; because plaintiff did not include in record on appeal transcripts of trial, appellate court was unable to determine what evidence was presented at trial, whether plaintiff objected at trial, how evidence was used, and how evidence may have prejudiced plaintiff; court therefore presumed that record supported rulings of trial court).

State v. Olcan, 204 Ariz. 181, 61 P.3d 475, ¶¶ 6–13 (Ct. App. 2003) (defendant's attorney read series of stipulated facts into record and submitted written stipulation to trial court; trial court concluded state had failed to provide defendant with opportunity for independent blood draw; on appeal, state contended statement about independent opportunity was only defendant's attorney's argument rather than stipulated fact; court noted parties had not made written stipulation part of record on appeal, thus court would presume missing portion supported trial court's determination).

State v. Vasko, 193 Ariz. 142, 971 P.2d 189, ¶ 12 (Ct. App. 1998) (although court reporter was present during hearing, no transcript was provided to appellate court; court presumed whatever transpired at hearing supported trial court's ruling that witness was unavailable).

Clark Equip. v. Arizona Prop. & Cas., 189 Ariz. 433, 943 P.2d 793 (Ct. App. 1997) (because record did not contain disclosure statement that was alleged to have in it an admission, appellant waived this issue on appeal).

State v. Scott, 187 Ariz. 474, 930 P.2d 551 (Ct. App. 1996) (because defendant did not object to trial court's failure to have bench conferences recorded, defendant waived issue on appeal).

State v. Doody, 187 Ariz. 363, 930 P.2d 440 (Ct. App. 1996) (assuming that substantial similarities of circumstances, interrogators, and defendants could render voluntariness of one confession relevant to issue of another confession's voluntariness, defendant made no showing in record that circumstances, interrogators, and defendants were similar).

103.b.020 Both the Arizona Supreme Court and the Arizona Court of Appeals have disapproved of the practice of arguing motions without the court reporter present, such as at bench conferences or in chambers, and then attempting to recreate the arguments later on the record.

State v. Paxton, 186 Ariz. 580, 925 P.2d 721 (Ct. App. 1996) (court took opportunity to express its own disapproval of practice of not recording bench conferences).

103.b.025 Although the Arizona Supreme Court has disapproved of the practice of holding unrecorded bench conferences, it has never required the verbatim reporting of all bench conferences, thus it is permissible for the trial court to follow a procedure as long as it makes a sufficient appellate record.

State v. Hargrave, 225 Ariz. 1, 234 P.3d 569, ¶¶ 57–61 (2010) (trial court did not have bench conferences recorded, but instead allowed counsel to make record out of presence of jurors and obtained counsel's assent that trial court had accurately described discussions).

103.b.030 If the trial court does not have bench conferences recorded and a party does not object, that party will have waived on appeal the failure to have the bench conferences recorded.

State v. Scott, 187 Ariz. 474, 930 P.2d 551 (Ct. App. 1996) (trial court did not have bench conferences recorded and then attempted to reconstruct them later if it deemed them important; because defendant did not object, defendant waived issue on appeal).

April 10, 2013